

Third Party Administrator for Flexible Spending Accounts
Contract No. 486

THIS AGREEMENT made and entered into as of this 18th day of October 2005 by and between Fringe Benefits Management Company, a corporation organized and existing under the laws of the State of Florida, having its principal office at 3101 Sessions Road, Tallahassee, Florida 32303 (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide Third Party Administration for Flexible Spending Accounts, that shall conform to the Scope of Services (Appendix A); Miami-Dade County's Request for Proposals (RFP) No. 486 and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated June 7, 2005, hereinafter referred to as the "Contractor's Proposal" which is incorporated by reference herein; and,

WHEREAS, the County desires to procure from the Contractor Third Party Administration for Flexible Spending Accounts services for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Contract Documents" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Appendix A), RFP No. 486 and all associated addenda and attachments, the Contractor's Proposal, and all other attachments hereto and all amendments issued hereto.
- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Department of Procurement Management, or the duly authorized representative.
- d) The word "Contractor" to mean **Fringe Benefits Management Company** and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Change Order" or "Extra Work" or "Additional Work" resulting in additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Manager or the duly authorized representative designated to manage the Contract.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" "Program", or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Appendix A), 3) the Miami-Dade County's RFP No. 486 and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise indicated.
- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- b) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- c) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- d) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on the date stipulated on page one, first paragraph of this agreement and shall continue until December 31, 2007. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for three (3) additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period upon mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County**a) to the Project Manager:**

Miami-Dade County
General Services Administration
111 N.W. 1st Street, Suite 2340
Miami, Florida 33128

Attention: RMD Division Director
Phone: (305) 375-4281
Fax: (305) 679-7787
e-mail: mb16@miamidadegov

and,

b) to the Contract Manager:

Miami-Dade County
Department of Procurement Management
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974
Attention: Director
Phone: (305) 375-5257
Fax: (305) 375-2316

(2) To the Contractor

Fringe Benefits Management Company
3101 Sessions Road

Tallahassee, Florida 32303

Attention: Darryl Beacher
Phone: (800) 872-0345, ext. 2451
(850) 425-6200, ext. 2451
Fax: (850) 425-6220
e-mail: dbeacher@fbmc-benefits.com

Either party may at any time designate a different address and/or contact person by giving notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be as stipulated Appendix B, Price Schedule. The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 8. PRICING

Prices shall remain firm and fixed for the term of the Contract, including any option or extension periods; however, the Contractor may offer incentive discounts to the County at any time during the Contract term, including any renewal or extension thereof.

ARTICLE 9. METHOD AND TIMES OF PAYMENT

A) For the Third Party Administration fees, pursuant to Appendix B, Section A, the County shall employ a self-billing process (in arrears) of payment pursuant to Appendix B, Price Schedule with which the Contractor agrees is the payment mechanism to be used for this Agreement. The County shall remit to the third party administrator the total premiums due for each member at the end of each bi-weekly pay period and any invoiced health plan non-discrimination testing (as stipulated on Section B, Other Services of Appendix B of this Agreement) in keeping with the County's system of remittance.

A 60-day grace period shall be granted for remittance of premiums in the case of employees in a "leave without pay" status.

B) For the "Other Services", pursuant to Appendix B, Section A, all invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County and shall show the County's contract number. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In

accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Manager, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

Proposer shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Proposer or its employees, agents, servants, partners principals or subcontractors. Proposer shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Proposer expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Proposer shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

The Proposer shall furnish to the RFP Unit, Department of Procurement Management, Administration Division, 111 NW 1st Street, Suite 1300, Miami, Florida 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Proposer as required by Florida Statute 440.
- B. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage.**
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
- D. Professional Liability Insurance in an amount not less than \$1,000,000 with the deductible per claim, if any, not to exceed 10% of the limit of liability.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Insurance and are members of the Florida Guaranty Fund.

Certificates will indicate no modification or change in insurance shall be made without thirty (30) days in advance notice to the certificate holder.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within fifteen (15) calendar days after County notification to Contractor to comply before the award is made. If the insurance certificate is received within the specified time frame but not in the manner prescribed in this Agreement, the Contractor shall be verbally notified of such deficiency and shall have an additional five (5) calendar days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within twenty (20) calendar days after County notification to comply, the Contractor shall be in default of the contractual terms and conditions and award of the Contract will be rescinded, unless such time frame for submission has been extended by the County.

The Contractor shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and

professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.

- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not require the termination and or demotion of such Contractor's personnel.
- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES ARE THE RESPONSIBILITY OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services; questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.
- b) The Contractor shall be bound by all determinations or orders and shall promptly obey and follow every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Manager or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Manager's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Manager within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Manager may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on

an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Manager participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Manager for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Manager is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Manager, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendixes to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope Of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The Contractor agrees that the County or its duly authorized representatives or governmental agencies shall, until the expiration of three (3) years after the expiration of

this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this Agreement.

The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.
- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a

satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.

- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Provider and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County permitting the County to request completion of performance by the Subcontractor of its obligations under the subcontract, in the event the County finds the Contractor in breach of its obligations, the option to pay the Subcontractor directly for the performance by such subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION FOR CONVENIENCE AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.

- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be disbarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.

In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor and in such event:

- d) The Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any noncancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- e) In the event that the County exercises its right to terminate this Agreement pursuant to this Article the Contractor will be compensated as stated in the payment Articles, herein, for the:
 - i. portion of the Services completed in accordance with the Agreement and the Work Order up to the Effective Termination Date; and
 - ii. noncancelable Deliverables that are not capable of use except in the performance of this Agreement and Work Order and has been specifically developed for the sole purpose of this Agreement Work Order but not incorporated in the Services.
- f) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing and in addition to those instances

referred to herein as a breach, an Event of Default, shall include the following:

- i. the Contractor has not delivered Deliverables on a timely basis.
 - ii. the Contractor has refused or failed, except in case for which an extension of time is provided, to supply enough properly skilled Staff Personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection "b" below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the time frame set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with terms of this Agreement. Until the County receives such assurances the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed time frame, the County may:
- i. treat such failure as a repudiation of this Agreement;
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives, may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE /TERMINATION

If an Event of Default occurs, in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period

of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for reprocurement of Services, including procurement and administrative costs; and,
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default.

The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any patent, copyrights, service marks, trade secret, or any other third party proprietary rights.
- b) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- c) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the

functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

- d) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.
- e) The Contractor shall not infringe any copyright, trademark, service mark, trade secrets, patent rights, or other intellectual property rights in the performance of the Work.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered confidential information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages

may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledge that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the contractors will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the

Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection of the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.

- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.
- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. BUSINESS APPLICATION AND FORMS

Business Application The Contractor shall be a registered vendor with the County – Department of Procurement Management, for the duration of this Agreement. It is the responsibility of the Contractor to file the appropriate Vendor Application and to update the Application file for any changes for the duration of this Agreement, including any option years.

Section 2-11.1(d) of Miami-Dade County Code as amended by Ordinance 00-1, requires any county employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County from competing or applying for any such contract as it pertains to this solicitation, must first request a conflict of interest opinion from the County's Ethic Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County and that any such contract, agreement or business engagement entered in violation of this subsection, as amended, shall render this Agreement voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS**Independent Private Sector Inspector General Reviews**

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision herein, apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and

extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-2; (m) federal, state and local government-funded grants; and (n) interlocal agreements. ***Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award***

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this

Agreement, including but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work in connection with this Contract shall provide equal opportunity for employment because of race, religion, color, age, sex, national origin, sexual preference, disability or marital status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.
- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to: not discriminate against any employee or applicant for employment because of race, religion, color, sex, handicap, marital status, age or national origin, and will take affirmative action to ensure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract with the County, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-

Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the grant of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such

information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and
- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida.

ARTICLE 39. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or PROTECTED HEALTH INFORMATION

Any person or entity that performs or assists Miami-Dade County with a function or activity involving the use or disclosure of "Individually Identifiable Health Information (IIHI) and/or Protected Health Information (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Miami-Dade County Privacy Standards Administrative Order. HIPAA mandates for privacy, security and electronic transfer standards, include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to Miami-Dade County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Contractor and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to Miami-Dade County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to Miami-Dade County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

ARTICLE 40. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: Lorraine Ritch

By: Rita Silva

Name: Lorraine Ritch

Name: Rita Silva

Title: President

Title: Si. Procurement Conting. Off.

Date: 10/3/05

Date: 10/18/05

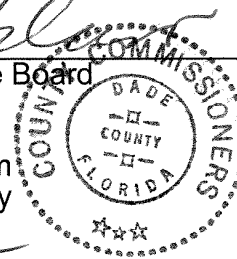
Attest: Patricia K. Deely
Corporate Secretary

Attest: [Signature]
Clerk of the Board

Corporate Seal

Approved as to form
and legal sufficiency

[Signature]
Assistant County Attorney



State of Florida
County of Leon

Sworn to (or affirmed) and subscribed before me this 3rd day
of October, 2005, by Lorraine Ritch.



Catherine G. Sculley
MY COMMISSION # DD073663 EXPIRES
November 20, 2005
BONDED THRU TROY FAIN INSURANCE, INC.

Catherine G. Sculley
Signature of Notary

Catherine G. Sculley
Printed Name of Notary

Personally Known ✓ OR Produced Identification _____
Type of Identification _____
Produced _____

APPENDIX A

1. INTRODUCTION

Miami-Dade County, hereinafter referred to as the "County", as represented by General Services Administration is contracting for administrator services for the pretax Healthcare Flexible Spending Accounts (HCFSA) and Dependent Care Flexible Spending Accounts (DCFSA). Any full-time employee who has completed 90 days of employment is eligible. Part-time employees who consistently work at least 60 hours biweekly and have completed 90 days of employment are also eligible. Coverage is effective the first day of the month following completion of the eligibility period. Employees are offered a 30 day grace period beyond their initial eligibility date. Coverage requested during the grace period becomes effective the first of the following month.

The Cafeteria Benefits are governed by Section 125 of the Internal Revenue Services (IRS) Code. The County has approximately 29,500 employees eligible for benefits. The annual open enrollment for employee benefits is conducted on an "evergreen" enrollment basis where employees continue their current elections unless they submit a change, with the exception of the Flexible Health Care and Dependent Care Spending Accounts which require an annual election.

The Contractor shall hold a current Third Party Administrator license in the State of Florida throughout the contract period and any renewal options exercised by the County.

2 CURRENT (2005) SECTION 125 CAFETERIA BENEFITS (PRE-TAX) – (Provided for informational purposes only and is subject to change)

The County currently offers the following:

- Medical
 - One Point of Service (POS) Plan
 - Four Health Maintenance Organizations (HMO)
 - County pays 97% of the cost for the employee only coverage in the POS plan
 - County pays the full cost for employee only coverage in the HMO plan
- Dental
 - One indemnity
 - Two prepaid plans
 - Each plan includes a standard and enriched option
 - County pays full cost for the employee at the standard plan rate
- Vision
 - One vision plan
 - Employee pays full cost
- Disability Insurance
 - Offered through UNUM
 - Employee pays the full cost for short term disability (STD) and long term disability (LTD)

- Executives may enroll for Executive LTD
- Flexible Spending Accounts
 - Healthcare Flexible Spending Account (maximum of \$5,000/year)
 - Dependent Care Flexible Spending Account (maximum of \$5,000/year)

The 2005 biweekly minimum and annual maximum contribution amounts in the flexible spending account plans are as follows:

Plan Type	Bi-Weekly Minimum	Annual Election Amount for Plan Year 2005 (including administrative fees)
Healthcare FSA	\$10	\$5,000
Dependent Care FSA	\$10	\$5,000 (depends on tax filing status)

The County reserves the right to change the limit to the maximum annual election.

3. REQUIREMENTS AND SERVICES TO BE PROVIDED:

A. Plan Documents

The Plan document is the legal document governing the Plan in accordance with Section 125 of the IRS Code and all other applicable legal requirements. The Contractor shall prepare Plan document(s) and appropriate amendments for the Plans administered, including review by Contractor's legal counsel. The Contractor shall provide the County with a complete copy of the Plan document governing the Spending Accounts prior to January 1, 2006 with timely updates to incorporate legislative changes.

B. Implementation Plan

The Contractor, upon award, shall submit a detailed final implementation plan and timetable, with descriptions of deadlines, deliverables, and responsible staff for each task, to the County for approval. This plan shall include: a) initial test interface with the County payroll system and data transfer schedules; b) procedures for administration and banking; c) Sections 125 and 129 and any other non-discrimination testing for this program; and d) filing of any forms required by state or federal laws for spending accounts.

C. Communications Program

The Contractor shall:

1. Provide an article for insertion in the annual open enrollment newsletter, at the County's request, and any other required materials related to the spending accounts, such as letters to FSA participants to help prevent forfeitures, notifications to participants of changes in legislation or if clarifications are needed for existing benefits and reimbursement forms. The Contractor shall provide the County's Benefits Manager with a minimum of five (5) calendar days to a maximum of 7 calendar days to review changes to communications.

2. Accept the County's standard Enrollment Form for new enrollees and open enrollment. The County shall retain final approval authority of the standard enrollment form. The County may opt to implement web enrollment for the annual open enrollment and/or ongoing enrollments.
3. Provide a Flexible Benefits Status Change Form, including updates, subject to the County's approval with sufficient supplies throughout the year. The County shall be responsible for reviewing all change in status requests.
4. Have access to County employees on County premises as determined by the County.
5. Provide all COBRA Administration services, with respect to FSA administration, including mailing of COBRA letter to terminated employees, with outstanding balance in the HealthCare Spending Account, upon notification of a qualifying event from the County. The County shall provide a biweekly report of employees who terminate employment.
6. Abide by performance standards. The Contractor shall provide the County with annual reporting, no later than February 15, for prior plan year compliance with each performance standard.
7. Shall provide any revisions to the Flexible Spending Account claim forms to the County for approval. Claim forms and any other materials needed by employees shall be provided by the Contractor to plan enrollees throughout the year.
8. Administer the provisions of Health Insurance Portability and Accountability Act (HIPAA) including notification to enrollees of their HIPAA rights.
9. Collect all biweekly FSA amounts due from participants in a leave of absence status, upon receiving notice of leave of absence status from the County. This includes issuing monthly delinquent and cancellation notices. Payroll deduction records shall be considered notice of employees return from leave of absence status.

D. Alternative Materials and Communications

Communication materials, if requested by the County, and customer service shall be provided by the Contractor in English. Braille, Creole, and Spanish translated communications shall also be provided as requested by the County. Materials in Braille, enlarged print, on audio tape, and/or diskette shall be provided by the Contractor as needed, in order to ensure compliance with the Americans with Disabilities Act. These services shall be provided at negotiated hourly rates.

E. Additional Benefits

The County may request the use of the Contractor's legal staff to provide support on day-to-day activities such as changes in legislation impacting Section 125, Plans for FSA issues only.

F. Administration

The Contractor shall administer the Plan to include the following services:

1. Provide administrative and reporting systems that conform to the County's data processing requirements and are designed to interface with the County's payroll system. The biweekly payroll spending accounts data file is transmitted, using a File Transfer Protocol (FTP), to a specific server for Contractor to retrieve the data file no later than 24 hours after the biweekly payroll is processed.

2. The Contractor shall reconcile payroll, and shall provide a reconciliation statement to the County on a biweekly basis identifying any discrepancy between employee elections and payroll deductions. The statement shall include employee's name, social security number, scheduled biweekly deduction and actual deduction taken and number of pay periods missed.

3. Maintain individual reimbursement accounts for participating employees, crediting contributions to each account and debiting periodic payments against those accounts according to authorizations submitted by the participants. Daily reimbursements to employees shall be made within four (4) working days after a clean (no additional information required) claim is filed. Provide for direct deposit of FSA checks to employees' financial institutions, if requested by the County employee. There shall be accurate account statements provided upon processing claims, quarterly and a "Use It or Lose It" letter to be issued during the fourth quarter as a fifth statement. Statements shall include expected annual deposits, year-to-date authorized requests, year-to-date contributions, claims filed, claims paid, and remaining balances.

Allow, in accordance to IRS guidelines, a grace period of two (2) and a half months after the end of the plan year during which unused contributions may be used for the Health Care Spending Account (HCSA). Expenses for qualified benefits incurred during the grace period shall be paid or reimbursed from HCSA benefits remaining unused at the end of the immediately preceding plan year to which it relates. Participants shall have a total of fourteen months and fifteen days (the 12 months in the current plan year plus the new grace period) to use the benefits or contributions for a plan year before those amounts are forfeited under the "use it or lose it" rule. Participants shall be allowed 120 days for filing requests for reimbursement after the close of the plan year which ends December 31. The same provision shall apply to the Dependent Care Spending Account if requested by the County.

5. Provide participants with written notice of claims pended or denied with the reason for the denial or pended status.

6. All participant reimbursement checks shall be clearly marked "Void After 180 Days"; the County will not be responsible for the payment of stale date checks.

7. Manage bank account transactions, such as premium disbursements. Such accounts will be interest bearing and all interest, forfeitures, benefit provider refunds, dividends, reserve payments, surplus distributions or any other such funds shall be payable to the County upon demand but not less frequently than quarterly. Reconciliation of the bank account signed and dated by an accountant shall be completed within 30 days of the bank statement date by the Contractor and submitted to the County along with the bank statement. The Contractor shall prepare a detailed report as to the nature and amount of such surplus, no less frequently than annually.

8. Issue letters to participants on outstanding checks. The first notification letter shall

be sent to the payee when the check has been outstanding for 4 months. A second notification letter shall be sent to the payee when the check has been outstanding for 7 months. A report reflecting every check that has been outstanding for over one year shall be prepared and provided by Contractor to the County quarterly.

9. Provide various flexible spending account reports concerning enrollment, turnaround time on claims processing, flexible spending account balances and forfeitures, to be submitted by the Contractor to the County monthly. The reports include, but are not limited to:

- a) Quarterly (monthly if requested by the County) Dependent Reimbursement Summary Report
- b) Quarterly (monthly if requested by the County) Medical Reimbursement Summary Report
- c) Monthly Reimbursement Account Activity Report
- d) Bi-weekly Spending Account Reconciliation Report-HCFSA/DCFSA
- e) Weekly reports of claims to be funded

Also, the Plan Surplus and Forfeiture report shall be provided annually, no later than July 15 for the prior year.

10. Provide monthly reports to the County on County-specific customer service statistics. The reports shall provide the following details:

- a) number of calls;
- b) average length of time on hold (should be no more than 1 minute);
- c) average length of calls;
- d) number of call backs and reasons for call backs; and
- e) categories of calls and detailed descriptions;

11. Incorporate the County's "Benefits and You" logo onto letterhead to be used for participant correspondence.

12. Provide customer service representatives available via toll-free telephone number at least 12 hours per day Monday through Friday 7:00 a.m. to 7:00 p.m. (local time).

13. Provide an acceptable process to resolve participant complaints within 48 hours.

14. Provide customer service and account balance information, accessible 24 x 7 via toll-free telephone number and the web.

15. Provide Debit card technology and capabilities if requested by the County.

16. Provide nondiscrimination testing.

17. Have no minimum participation requirements.

G. Compliance

The Contractor shall take actions necessary to ensure that the Plan complies with all applicable federal and state laws. This includes, but is not limited to, compliance with

IRS regulations.

H. Non-Discrimination Testing

The Contractor shall conduct an annual review to assure that the Plan remains nondiscriminatory within the meaning of IRS regulations so that employees do not incur unnecessary tax liability. The Contractor shall recommend actions to be taken as the result of this review. This shall include nondiscrimination testing for IRS Sections 105, 125 and 129 and any other applicable tests for all Plans being administered. The review for the calendar year will be provided within 21 days upon receipt of a clean data tape from the County. The Contractor shall notify the County by the end of the first quarter of the calendar year of testing data requirements.

I. IRS Filings

The Contractor shall complete and file any IRS filings required by federal law.

J. Auditing Requirements

The Contractor shall provide, at the County's request, audit services, no more than annually. The Audit shall focus specifically on the County account administration and include a review of all banking activities, claims and reimbursements, reimbursement account statements, financial and customer service criteria.

K. Banking Requirements

All employee salary reductions for Spending Account contributions shall be deposited into the County's Cafeteria Benefits Account, which shall remain part of the general assets of the County. The Contractor shall set up a separate account to receive funds for administrative fees, premiums, and disbursements from Reimbursement Accounts. The County will deposit funds into the Contractor's account when requested by the Contractor, not to exceed the balance in the Miami-Dade County Cafeteria Benefits Account. Transfers to the Contractor's account are subject to post audit and adjustments within sixty (60) days of the transfer.

The bank used by the Contractor, in the performance of the Services described herein, shall be selected based on the following criteria:

1. The bank shall be a qualified public depository of the State of Florida which must be approved by the County's Finance Department.
2. The bank shall have a multi-state regional presence.
3. The bank shall have a high profile presence in Florida.
4. The bank shall be financially stable.
5. The bank shall use modern technology in data processing, funds transfer, and customer service.
6. The bank shall have a satisfactory rating in meeting community credit needs.
7. All charges for stop payment requests, courier services, wire transfers, overdrawn account, check processing, etc. shall be analyzed against available balances without recourse to the County.
8. The bank shall be able to provide monthly statements.
9. The bank shall pay interest monthly.
10. The bank shall have the ability to initiate direct deposit of reimbursements.

L. Record Retention

The Contractor shall maintain County employees records for a minimum of seven (7)

years.

M. Policies and Procedures

The Contractor shall provide, no later than February 1, 2006, a customized Policies and Procedures Manual which will be used by the Administrator and the County personnel. The Contractor shall be responsible for updating to incorporate most current procedures.

N. Transition Enrollment Services

Upon execution of the Agreement, the Contractor shall fulfill all responsibilities of Open Enrollment for the Plan year 2006, by updating the information related to administration of the Flex Spending Accounts in the County's Benefits Handbook. Final updates to the Handbook shall be provided to the County no later than August 15 for the following plan year. Open enrollment is usually scheduled to begin mid-October of each year.

O. Expiration of Agreement

Upon expiration of the Agreement, the Contractor shall fulfill all responsibilities of the Plan year, including but not limited to the administration of FSA's through the grace period and run out period.

P. HIPPA Business Associate Agreement

See Appendix D.

4. OPTIONAL SERVICES

The Contractor shall conduct non-discrimination testing for the current County health plan participants, if requested by the County.

APPENDIX B**Price Schedule**

The Contractor's price for providing services as stated in Appendix A, Scope of Services and applicable attachments thereto are fixed as determined below.

A. RATES:**1) Rates for 2006 Plan Year**

HealthCare and /or Dependent Care Participants	Cost Per Month
All	\$ 4.25

2) Rates for 2007 Plan Year and any options-to-renew exercised:

HealthCare and /or Dependent Care Participants *	Cost Per Month
Less than 2,250	\$ 4.25
2,251 to 3,499	\$ 4.20
3,500 to 4,999	\$ 4.15
5,000 and greater	\$ 4.05

Note: *2007 Year Plan rates will be determined by the number of participants enrolled at the end of January 2006. Rates for any subsequent year (options-to-renew or extensions) will be determined by the number of participants enrolled at the end of January of the previous year.

B. OTHER SERVICES

Rate for conducting non-discrimination testing for the County health plan participants, if requested by the County.

	Participants	Annual Fees
Health Plan Non-Discrimination Testing	29,500	\$ 5,000

Note: Any excess testing needed by the County in excess of 29,500, shall be paid on a pro-rated basis.

APPENDIX C

Performance Standards

Contractor shall meet or exceed the following performance standards. Performance below the standard level of performance will result in a penalty, as mutually agreed below. Performance standards shall be measured and reported quarterly; however, penalties (if any) will be assessed on an annual basis. Superior performance and service is expected.

Category	Standard	Percentage of Fees at Risk
Claims Processing		
Claims Financial Accuracy	99% payment accuracy ratio	95-98% = 1%; <95% = 2%
Claims Turnaround	Daily reimbursements to employees shall be made within four (4) working days after a clean (no additional information required) claim is received by FBMC.	80-99 in 4 days = 1% <80% in 4 days = 2%
Customer Service		
Telephone Response Time (with a live person)	90% within 60 seconds	If 90% of calls have a response time between 61 to 79 seconds = 1% If 90% of calls have a response time more than 80 seconds = 2%
Telephone Abandonment Rate	Less than 5%	Between 5 and 10% = 1% 10% or more = 2%
Reporting		
Release of Reports	Provided within 45 days of the end of the reporting period	90-99% = 1%; <90% = 2%
Annual Forfeiture Report for prior Plan Year	July 15 for prior plan year	If not met = 1%
Final Update to Annual Benefits Handbook	August 15 for upcoming plan year	If not met = 1%
Category		Maximum Percentage of Fees at Risk
Total % of Annual Fees at Risk		Up to 10%

APPENDIX D

MIAMI-DADE COUNTY HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum ("Addendum") supplements and is made a part of the Agreement by and between Miami-Dade County ("Covered Entity") and Fringe Benefits Management Company ("Business Associate"), and will become effective at Contract No. 486 execution.

RECITALS

A. Covered Entity wishes to disclose certain information ("Information") to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").

B. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

C. The purpose of this Addendum is to satisfy certain standards and requirements of HIPAA and the HIPAA Regulations, including, but not limited to, Title 45, Section 164.504(e) of the Code of Federal Regulations ("CFR"), as the same may be amended from time to time.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. Definitions.

a. "Business Associate" shall have the meaning given to such term under the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

b. "Covered Entity" shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 160.103.

c. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

d. "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and

the HIPAA Regulations, including, but not limited to 45 CFR Section 164.501. [45 CFR § 160.103; 45 CFR § 501]

2. Obligations of Business Associate.

a. Permitted Uses and Disclosures. Business Associate may use and/or disclose PHI received by Business Associate pursuant to this Agreement (“Covered Entity’s PHI”) solely in accordance with the specifications set forth in Exhibit A, which is incorporated herein by reference. In the event of any conflict between this Agreement and Exhibit A, this Agreement shall control. [45 CFR § 164.504(e)(2)(i)]

b. Nondisclosure. Business Associate shall not use or further disclose Covered Entity’s PHI otherwise than as permitted or required by this Agreement or as required by law. [45 CFR § 164.504(e)(2)(ii)(A)]

c. Safeguards. Business Associate shall use appropriate safeguards to prevent use or disclosure of Covered Entity’s PHI otherwise than as provided for by this Agreement. [45 CFR § 164.504(e)(2)(ii)(B)] Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Business Associate’s operations and the nature and scope of its activities.

d. Reporting of Disclosures. Business Associate shall report to Covered Entity any use or disclosure of Covered Entity’s PHI otherwise than as provided for by this Agreement of which Business Associate becomes aware. [45 CFR § 164.504(e)(2)(ii)(C)]

e. Business Associate’s Agents. Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI received from (or created or received by Business Associate on behalf of) Covered Entity agree to the same restrictions and conditions that apply to Business Associate with respect to such PHI. [45 CFR § 164.504(e)(2)(D)]

f. Availability of Information to Covered Entity and Provision of Access and Accountings. Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity’s obligations to provide access to, provide a copy of, and account for disclosures with respect to PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Sections 164.524 and 164.528. Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524. As requested by Covered entity, Business Associate shall produce an accounting of disclosures to an Individual in accordance with 45 CFR § 164.528. [45 CFR § 164.504(e)(2)(E) and (G)]

g. Amendment of PHI. Business Associate shall make Covered Entity’s PHI available to Covered Entity as Covered Entity may require to fulfill Covered Entity’s obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR Section 164.526 and Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity’s PHI into copies of such PHI maintained by

Business Associate. Business Associate agrees to make any amendment(s) to Protected Health Information that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity. [45 CFR § 164.504(e)(2)(F)]

h. Internal Practices. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Business Associate's compliance with HIPAA and the HIPAA Regulations. [45 CFR § 164.504(e)(2)(H)]

i. Notification of Breach. During the term of this Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.

3. Audits, Inspection and Enforcement. From time to time upon reasonable notice, upon a reasonable determination by Covered Entity that Business Associate has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Addendum. Business Associate shall promptly remedy any violation of any term of this Addendum and shall certify the same to Covered Entity in writing. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Addendum, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Agreement.

4. Termination.

a. Material Breach. A breach by Business Associate of any provision of this Addendum, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by Covered Entity pursuant to Section [termination for breach section] of the Agreement. [45 CFR § 164.504(e)(3)]

b. Reasonable Steps to Cure Breach. If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Addendum or another arrangement and does not terminate this Agreement pursuant to Section 4(a), then Covered Entity shall take reasonable steps to cure such breach or end such violation, as applicable. If Covered Entity's efforts to cure such breach or end such violation are unsuccessful, Covered Entity shall either (i) terminate this Agreement, if feasible or (ii) if termination of this Agreement is not feasible,

Covered Entity shall report Business Associate's breach or violation to the Secretary of the Department of Health and Human Services. [45 CFR § 164.504(e)(1)(ii)]

c. Judicial or Administrative Proceedings. Either party may terminate this Agreement, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA or (ii) a finding or stipulation that the other party has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

d. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall return and destroy all PHI received from Covered Entity (or created or received by Business Associate on behalf of Covered Entity) that Business Associate still maintains in any form, and shall retain no copies of such PHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 CFR § 164.504(e)(2)(I)]

5. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Addendum, HIPAA or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate, is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

6. Amendment.

a. Amendment to Comply with Law. The parties acknowledge that state and federal laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all PHI that it receives or creates pursuant to this Agreement. Upon Covered Entity's request, Business Associate agrees to promptly enter into negotiations with Covered Entity concerning the terms of an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HIPAA Regulations or other applicable laws. Covered Entity may terminate this Agreement upon 30 days' written notice in the event (i) Business Associate does not promptly enter into negotiations to amend this Agreement when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to this Agreement providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of HIPAA and the HIPAA Regulations.

b. Amendment of Exhibit A. Exhibit A may be modified or amended by mutual agreement of the parties at any time without amendment of this Agreement.

7. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

8. Effect on Agreement. Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Agreement shall remain in force and effect.

9. Interpretation. This Addendum and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, HIPAA Regulations and applicable state laws.

The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA Regulations.

EXHIBIT A OF APPENDIX D

PERMITTED USES AND DISCLOSURES

This Exhibit sets forth the permitted uses and disclosures of Information by Business Associate pursuant to Section 2 of the Addendum to the Contract No. 248 by and between Covered Entity and Business Associate, and is effective as of April 14, 2003 (the "Exhibit Effective Date"). This Exhibit may be amended from time to time as provided in Section 5(b) of the Addendum.

1. Purpose(s) of Disclosure. The purposes for which Covered Entity may disclose PHI to Business Associate and for which Business Associate may use or disclose such information, is for Business Associate to provide services to, and act on behalf of Covered Entity pursuant to the Agreement.
2. Permitted Uses and Disclosures of Information. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the privacy policies and procedures of Covered Entity, including, without limitation, the following:
 - PHI may be used or disclosed in connection with treatment, payment and health care operations (as such terms are defined in 45 CFR §164.501) of Covered Entity.
 - Summary health information (as such term is defined in 45 CFR §164.504(a)) may be disclosed to Miami-Dade County for purposes of modifying, amending or terminating the (the "Plan") or for obtaining premium bids for providing coverage under the Plan.
 - PHI that has been de-identified, within the meaning of 45 CFR §164.514, may be used or disclosed.
 - PHI may be disclosed to Miami-Dade County in connection with the plan administration functions it performs for the Plan.
 - PHI may be disclosed directly to Individuals at their request.
 - PHI may be used or disclosed on Covered Entity's behalf for any other purpose permitted or required by HIPAA, the HIPAA Regulations, and/or other applicable law if done by Covered Entity.